IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11371 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KUSUM KUNVARBA PRATAPSINGHJI SINCE DECEASED

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11371 of 2002

MR MITUL K SHELAT for Petitioner No. 1-1/5

MR SIRAJ GORI, AGP.for Respondent No. 1-2

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 31/07/2003

ORAL JUDGEMENT

1. Heard Mr.M.K.Shelat, learned Advocate for the petitioners.

2 Rule. Mr.Siraj Gori, learned Assistant Government Pleader appears and waives service of rule on behalf of the respondents. By consent of the parties, the matter is taken up for final hearing and disposal.

3 This petition under Article 226 of the Constitution of India challenges the order of Gujarat Revenue Tribunal ('the Tribunal') passed on 26/6/2002 in Appeal No. TEN.A.A.27/96.

4 The petitioner is the owner of agricultural land bearing survey nos.123/5 and 123/6 situated at village Ramdhari, Tal.Sihor, Dist.Bhavnagar. Out of the said survey nos. 463 acres and 31 gunthas land was declared as surplus under Section 23(1) of the Gujarat Agricultural Lands and Ceiling Act,1960. The say of the petitioner is that at that time 2,50,000 trees were standing on the land declared to be surplus. In Compensation Case No. 201 of 1976 the competent authority viz. Mamlatdar, Sihor awarded a sum of Rs.1240.65 as compensation for the land and no compensation for the standing trees was awarded. The matter was carried right upto the Tribunal and the Tribunal while partly allowing the appeal upheld the right of the petitioner in respect of the compensation for the standing trees and remanded the matter to the competent authority for determining the quantum of trees and computation of the market value of the said trees. It appears that one more round of litigation right upto the Tribunal and back to the Mamlatdar took place in the interregnum and ultimately on 6.12.1995 the Mamlatdar computed the compensation payable for the standing trees at a sum of Rs.633.60 vide order dated 6.12.1995. While arriving at the aforesaid figure the competent authority excluded 71,280 trees for the reason that the said trees were less than 4 mtrs. in height as well as less than 30 sq.mtr. in girth. The matter was once again carried to the Tribunal and the order of the Tribunal dated 26.6.2002 is under challenge.

5 Mr.Mitul Shelat, learned Advocate for the petitioner submitted that the entire approach adopted by the competent authority and the Tribunal was bad in law and there was no reason for excluding 71,280 trees. Alternatively, a submission was made that in case the order of the competent authority and the Tribunal excluding the aforesaid number of trees was to be upheld the petitioner must be permitted to cut and remove the trees at the cost of the petitioner in light of the fact that not only the petitioner was not being compensated

for the said trees but the claim of the petitioner that these were fuel growing trees was not being accepted by the authorities.

6 Mr.Gori, learned AGP. appearing on behalf of the respondent supported the impugned order of the Tribunal and submitted that the Tribunal had decided the matter on the evidence on record before it and it was not open to this Court to intervene in the matter. In relation to alternative submission, it was submitted that in the circumstances, considering the finding of the competent authority and the Tribunal no such relief could be granted.

7 The Tribunal vide impugned order dated 26.6.2002 has taken into consideration not only the various contentions raised before it on behalf of the petitioner but also the evidence which has come on record before it in the form of panchnama made by the Mamlatdar, deposition of the petitioner, evidence of Range Forest Officer, deposition of Talati-cum-Mantri as well as panch witnesses. In context of the aforesaid evidence the Tribunal has upheld the order of the competent authority that 71,280 trees were having height less than 4 mtrs. and having girth less than 30 sq.mtr. In light of the aforesaid findings the order of the Tribunal does not require to be interfered with to the extent of upholding the exclusion of 71,280 trees as done by the competent authority and it is not necessary to discuss the evidence in detail in the circumstances, considering the order of the Tribunal as a whole.

8 The law is settled that the powers conferred on the High Court under Articles 226 and 227 of the Constitution of India are extraordinary and discretionary as distinguished from ordinary statutory powers. This is not a case where this jurisdiction is required to be exercised in favour of the petitioner. There is no jurisdictional error in the order of the Tribunal. It is not a case where jurisdiction has been exercised by the Tribunal in absence of jurisdiction, or where it has failed to exercise jurisdiction vested in it. Nor is there any error apparent on record. The High Court does not sit as an appellate Court : interference with pure findings of fact and appreciation of evidence is not permissible. Reappreciation of evidence cannot be undertaken. Even if on same set of facts, circumstances and evidence on record a different view may be possible that by itself is not enough to permit the High Court to intervene. A mere wrong decision does not clothe the High Court with jurisdiction, unless it is shown that the

Tribunal has reached a decision without any evidence in support of same, or that it has considered evidence which is partly relevant and partly irrelevant. In short, arrived at a decision no reasonable person would arrive at. None of the aforesaid factors exist in the present case so as to warrant any interference.

9 As regards the alternative contention, admittedly the same has been raised only during the course of hearing and, hence, the learend Assistant Government Pleader was granted time and it is stated that though number of letters and fax communications were addressed to the respondent authorities the learned Assistant Government Pleader has received no instructions on this count.

10 In light of the fact that the number of trees which has been excluded by the competent authority is large in number and is bound to be of no use to the respondent authorities it would be fair and just if the alternative prayer is granted. It will be open to the petitioner to cut and remove 71,280 trees which have been excluded by the competent authority. For this purpose, the petitioner shall inform the competent authority viz. Mamlatdar, Sihor well in advance and in presence of the competent authority or a person appointed by him, the exercise of cutting 71,280 trees and removal shall be carried out by the petitioner at her own cost. The competent authority is directed to ensure that the number of trees viz. 2310 for which compensation has been awarded may not be removed in the circumstances.

11 Mr.Shelat submits that the competent authority i.e. Mamlatdar was directed by the Tribunal on 26.6.2002 to fix compensation for 2310 trees in light of the observations made by the Tribunal in its impugned order, but in light of the pendency of the petition the competent authority has not worked out the said compensation. In light of the fact that the petition is being disposed of finally it will be open to the competent authority to determine the compensation as expeditiously as possible.

12 With the aforesaid observations the petition stands partly allowed to the aforesaid extent. Rule made absolutely accordingly. There shall be no order as to costs.

(D.A.Mehta, J)

d m.m.bhatt